

IN THE SMALL CLAIMS COURT OF RIVERS STATE OF NIGERIA

IN THE PORT HARCOURT MAGISTERIAL DISTRICT

HOLDEN AT PORT HARCOURT

CLAIM NO: PMC/SCC/272/2024

BETWEEN

MR. OMOMAH PHILIP AKPOYEVWE ----- CLAIMANT

AND

MR. OLANIYI TIAMINIYU SAFRA ----- DEFENDANT

Parties- Claimant is present.

Appearances- Joseph Paago appears for the Claimant.

JUDGEMENT

By a complaint filed the 18/10/2024, the Claimant instituted this matter and by leave of Court, the Defendant was served as per the affidavit of service dated 07/11/2024. On the 13/11/2024, Claimant's counsel on behalf of the Defendant entered a plea of not liable.

The Claimant opened its case on the 15/11/2024 and closed on the 27/11/2024 with the Claimant fielding in one witness and tendering 3 exhibits. The Claimant waved his right to file a final written address. The Defendant did not defend.

CLAIMANT'S CASE

The Claimant's case is that on the 15/03/2022, Chinda Owhorchukwu his friend called him that Defendant needed someone to finance his business. Parties agreed for N300,000 monthly as return on investment for N1,000,000 and Defendant thereafter gave him post-dated cheques. On the due date, Defendant asked Claimant not to present the cheque but extend time of repayment as he did not have money in the accounts. In April 2024 after the Police got involved, Defendant deposited documents covering his land as collateral asking that it be sold in the event of default. On the new date of payment, Defendant also defaulted and Claimant found a buyer but Defendant refused to sign the deed of conveyance. The Claimant is abandoning the excess and is praying the Court for the sum of N4, 900,000.

EVALUATION OF EVIDENCE/DECISION

From what is placed before the Court, the lone issue for determination is: whether the Claimant is entitled to the judgement of this Court.

The grouse of the Claimant is the alleged breach of an investment contract entered by parties.

The ingredients of a valid contract must be present. They are offer, acceptance, consideration, intention to create legal relationship and capacity to contract; that all these five ingredients are essential, and a valid contract cannot be formed if any of them is absent- ***BFIG v. BPE (2008) All FWLR (Pt. 416) 1915.***

In plain terms, the cause of action is the alleged breach of contract entered into by the parties on record.

The Claimant led evidence of the fact that his friend named Chinda Owhorchukwu called to inform him that Defendant needed someone to finance his business. He further stated that parties agreed for N300,000 monthly as return on investment for N1,000,000. and Defendant gave Claimant post-dated cheques. On the due date, Defendant asked Claimant not to present the cheque but extend time of repayment as he did not have money. That in itself is a default.

In April 2024 the Claimant lodged a complaint with the Police and after the Police got involved, Defendant deposited a deed of conveyance of a landed property sold to Defendant by one Uche Divine Jonathan, as collateral. In trying to get a soft landing, Defendant asked that the said property be sold in the event of default. On the new date of payment, Defendant also defaulted and Claimant found a buyer but when called upon, Defendant refused to sign the deed of conveyance.

A communal look at exhibits C2 & C3 discloses that the contract was entered into by MR. Owhorchukwu Chinda and Tiamiyu Olaniyi. However, the Claimant led evidence of the fact that he was not in town as at when he and Defendant entered the contract and he asked his friend to stand in for him. The cheques were issued in the name of the friend, Chinda Owhorchukwu. Documentary evidence is permanent, incorruptible and indelible unlike oral evidence which oozes out of the vocal cord of man and susceptible to distortion- ***EZEKIEL THOMAS & ANOR V HAJIYA RAKIYA SANI & ORS (2020) Legalpedia (CA) 11800.*** It follows therefore that oral evidence pales in the face of documentary evidence as it cannot be used to alter its contents. This is because, generally speaking, oral evidence is inadmissible to contradict the contents of a document.

The Claimant in course of his evidence told this Court that it was Mr. Chinda that approached him on behalf of Defendant and when the Defendant was to raise the post-dated cheques, as Claimant was not in town, he asked that the cheques be issued in the name of Chinda on his behalf. Subsequently, the agreement in exhibit C1 was reached. As has been noted above, oral evidence cannot alter what these documents contain. One of the exception is, where there is the existence of a separate oral agreement the document is silent on and which is not inconsistent with its terms, oral evidence can fly- Section 128 (1) (b) of the Evidence Act, 2011. Thus, the above oral evidence of the CW1 is catered for by the law. It falls within the allowed exception.

The above evidence adduced by the Claimant were neither challenged nor controverted. They are deemed admitted and the Court is enjoined to act on them- Section 123 of the Evidence Act, *supra*.

In civil cases as captured by Part IX of the Evidence Act *supra*, the burden of proof lies on the Claimant which by virtue of Section 134 of the same Act, shall be discharged on a balance of probabilities.

The defense was served the originating processes and issued with a hearing notice but failed, neglected and chose not to defend. The law is trite that an unchallenged, uncontroverted evidence is deemed admitted. Where as in the instant case there is no defense and evidence is uncontroverted, the onus of proof is satisfied on a minimal proof since there is nothing on the other side of the scale- **CHIEF S. N. MUOMAH V ENTERPRISE BANK LTD (2015) Legalpedia (CA) 13181.**

The Claimant is abandoning the excess and is praying the Court for the sum of N4, 900,000.00.

From the foregoing therefore, this Court finds that the Claimant has proved his case and is thus entitled to judgement of this Court and I so hold. Judgement be and is accordingly entered in favour of the Claimant and it is ordered that:

1. The Defendant pay to the Claimant the sum of N4, 900,000. 00 (Four Million, Nine Hundred Thousand naira) only as full and final settlement of the debt owed.

No order as to cost.

SIGNED

ANUGBUM, O.N.

SMC 3

11/12/2024.